

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CIVIL CASE NO. 1:22-cv-00087-MR-WCM**

SUZAN McKINNEY PARRIS, as)
Guardian Ad Litem for D.P., a minor,)

Plaintiff,)

vs.)

ORDER

CLEVELAND COUNTY BOARD OF)
EDUCATION; MARK PATRICK, in his)
individual capacity; and LATOSA)
WILBURN, in her individual capacity,)

Defendants.)

THIS MATTER is before the Court on Defendant Mark Patrick's Motion to Dismiss [Doc. 10]; Defendant Latosa Wilbourn's Motion to Dismiss [Doc. 12]; Defendant Cleveland County Board of Education's Motion to Dismiss [Doc. 16]; the Magistrate Judge's Memorandum and Recommendation [Doc. 29] regarding the disposition those motions; and the Objections by Defendant Cleveland County Board of Education and Defendant Mark Patrick [Docs. 30, 31] to the Memorandum and Recommendation.

Pursuant to 28 U.S.C. § 636(b) and the Standing Orders of Designation of this Court, the Honorable W. Carleton Metcalf, United States Magistrate Judge, was designated to consider the Defendants' motions and to submit a

recommendation for their disposition. On December 16, 2022, the Magistrate Judge issued a Memorandum and Recommendation regarding the pending motions. [Doc. 29]. The parties were advised that any objections to the Magistrate Judge's Memorandum and Recommendation were to be filed in writing within fourteen (14) days of service. [Id.]. Defendant Cleveland County Board of Education filed its Objections on December 23, 2022. [Doc. 30]. Defendant Mark Patrick filed his Objections on December 28, 2022. [Doc. 31]. The Plaintiff filed replies to these Objections on January 6 and January 10, 2023, respectively. [Docs. 32, 33].

After a careful review of the Memorandum and Recommendation and the Defendants' Objections thereto, the Court concludes that the Magistrate Judge's proposed conclusions of law are correct and consistent with current case law. Accordingly, the Court hereby accepts the Magistrate Judge's recommendation regarding the Defendants' motions to dismiss.

Accordingly, **IT IS, THEREFORE, ORDERED** that the Defendants' Objections [Docs. 30, 31] are **OVERRULED**, and the Memorandum and Recommendation of the Magistrate Judge [Doc. 29] is **ACCEPTED**.

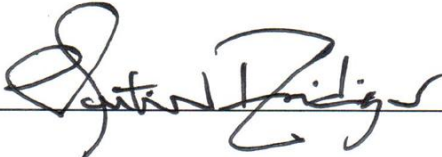
IT IS FURTHER ORDERED that:

1. Defendant Mark Patrick's Motion to Dismiss [Doc. 10] is **GRANTED IN PART** and **DENIED IN PART** as follows:
 - a. Plaintiff's claim for civil conspiracy is **DISMISSED**.
 - b. In all other respects, Defendant Patrick's Motion to Dismiss is **DENIED**, and the following claims against Patrick are allowed to proceed: negligence/gross negligence; claim pursuant to Section 1983; violation of the ADA; punitive damages; and false imprisonment.
2. Defendant Latosa Wilbourn's Motion to Dismiss [Doc. 12] is **GRANTED IN PART** and **DENIED IN PART** as follows:
 - a. Plaintiff's claim for civil conspiracy is **DISMISSED**.
 - b. In all other respects, Wilbourn's Motion to Dismiss is **DENIED**, and the following claims against Wilbourn are allowed to proceed: negligence/gross negligence; claim pursuant to Section 1983; violation of the ADA; punitive damages; and claim for false imprisonment.

3. Defendant Cleveland County Board of Education's Motion to Dismiss Plaintiffs' Complaint [Doc. 16] is **GRANTED IN PART** and **DENIED IN PART** as follows:
- a. Plaintiff's claims for negligence/gross negligence; and negligent training, negligent supervision, and negligent retention are **DISMISSED WITHOUT PREJUDICE**.
 - b. Plaintiff's claims pursuant to Section 1983, for violation of the North Carolina Constitution, for civil conspiracy, and for punitive damages are **DISMISSED**.
 - c. In all other respects, the Board's Motion to Dismiss is **DENIED**, and the Plaintiff's ADA claim against the Board shall be allowed to proceed.

IT IS SO ORDERED.

Signed: March 6, 2023



Martin Reidinger
Chief United States District Judge

